

THE CITY OF CLAYTON

Board of Aldermen
City Hall – 10 N. Bemiston Avenue
April 12, 2016
7:00 p.m.

Minutes

Mayor Sanger called the meeting to order and requested a roll call. The following individuals were in attendance:

Aldermen: Cynthia Garnholz, Mark Winings, Joanne Boulton, Alex Berger III, Rich Lintz, and Ira Berkowitz.

Mayor Sanger
City Manager Owens
City Attorney O'Keefe

Alderman Boulton moved to approve the March 29, 2016 minutes. Alderman Winings seconded.

The motion to approve the minutes passed unanimously on a voice vote.

PUBLIC REQUESTS AND PETITIONS

None

PUBLIC HEARING AND A RESOLUTION TO CONSIDER APPROVING AN AMENDMENT TO THE CONDITIONAL USE PERMIT – PENO LOCATED AT 7600 WYDOWN BOULEVARD

Mayor Sanger opened the public hearing and asked for proof of publication.

City Manager Owens reported that this is a public hearing to consider approving a Resolution for an amendment to the Conditional Use Permit issued to SCAROLA, LLC, for the operation of a restaurant known as Peno at the subject location.

The Conditional Use Permit issued in December, 2012, for the operation of Z Pizza, was administratively transferred in December, 2015, to allow the operation of Peno. Condition No. 15 of the Conditional Use Permit reads: "No outdoor speakers or music shall be permitted." On January 17, 2016, the City Clerk received an e-mail from the business owner acknowledging receipt and acceptance of the Conditional Use Permit.

Patrick Kehm, restaurant owner, is requesting an amendment to the Conditional Use Permit to allow outdoor music events to be held on the surface parking lot in front of the building one Sunday a month during the months of June through September, 2016, between the hours of 4 p.m. and 8 p.m. A live band will be providing the music. Per Section 215.765 of the City Code, the playing of any orchestra, radio, phonograph or musical instrument or instruments or singing upon any premises while used for a commercial open air garden, outdoor restaurant or other business conducted in the open air where such premises are located within five hundred (500) feet of any residence or building used or occupied for private family residential purposes is prohibited between the hours of 10:00 P.M. and 7:00 A.M. The owner's proposal does not violate the City Code.

The other tenant in the building, a real estate office, is not open on Sundays.

The applicant has indicated that the parking lot will be blocked to vehicular traffic during the events and that parking during these events will be made available to them by Central Presbyterian Church on their school lot located at 700 South Hanley Road.

The property owner, Mark Mannion, has submitted written approval for these events. Written approval of the use of the school parking lot had not been received as of the date this report was written. The applicant has indicated that he will submit written approval from the church by the date of the hearing.

Properties to the north, south and east are residential. Notices of this hearing were mailed to property owners within 200 feet of the subject property.

Recommendation is to approve the requested amendment to allow four Sunday concert events for the months of June through September, 2016, pursuant to the conditions contained in the resolution.

In response to Alderman Garnholz's question with regards to parking on the church lot, Mr. Kehm addressed the Board stating that he forgot to bring the letter from the church, but will get it to the City Clerk this week.

Mr. Kehm explained that the band will perform on the patio one Sunday per month during the months of June, July, August, and September. There will be a variety of music, i.e. blue grass, blues, jazz, etc. He would like this to be a benefit to the community as well as promoting his restaurant. The hours scheduled to perform would be 4:00 p.m. to 8:00 p.m., but is willing to stop the music at 7:00 p.m. if that would help.

Ms. Hyran Son, 7560 Wydown Boulevard, addressed the Board stating that she resides on the third floor of her building and that she would have an issue with a band playing outside on Sunday evenings during her rest times. She feels that the noise would not be a benefit to her.

Ms. Lisa Cakmak, 7559 Byron Place, addressed the Board with her concerns of trying to put her baby to sleep at 7:00 p.m. during the band performance every Sunday night.

Mayor Sanger clarified that the band would only be playing one Sunday for four months. Ms. Cakmak acknowledged her error and thanked him for the clarification. She said that since it was only one Sunday a month for four months then that would be okay for her.

Alderman Lintz commented that the noise volume is very critical in maintaining a comfortable level for the neighbors who may not participate or support the proposal. He asked if there was a way to monitor the noise.

Alderman Berkowitz commented that the restaurant is proposing the music for just four Sundays throughout the summer months, June – September. He pointed out that this particular restaurant location has been difficult for past restaurants to succeed. He feels that this is a good promotion to help its survival and is a way to boost its food sales.

Alderman Boulton commented that she agreed with Alderman Lintz. She relates to the noise concerns and recalled an instance while living at The Plaza, she contacted, Brazikat Restaurant to ask that they turn down the loud music.

In response to Mayor Sanger's question, Susan Istenes noted that the conditional use permit is structured that the music would be allowed for the months of June, July, August, and September 2016 (one Sunday a month) only.

In response to Mayor Sanger's request, Mr. Kehm agreed that he would coordinate his Sunday schedule so that it does not fall on the same Sundays as the Music at Oak Knoll Park events.

Mayor Sanger closed the public hearing.

Alderman Garnholz moved to amend Resolution No. 16-07 to change the hour to end the music at 7:00 p.m. instead of 8:00 p.m. Alderman Winings seconded.

The motion passed unanimously on a voice vote.

Alderman Garnholz moved to approve Resolution No. 16-07, considering an amendment to the conditional use permit for Peno Restaurant located at 7600 Wydown Boulevard to allow outdoor music and as previously amended. Alderman Winings seconded.

The motion passed unanimously on a voice vote.

PUBLIC HEARING AND a RESOLUTION TO CONSIDER APPROVING A transfer of CONDITIONAL USE PERMIT LOCATED AT 7610 WYDOWN BOULEVARD

Mayor Sanger opened the public hearing and asked for proof of publication.

City Manager Owens This is a public hearing to consider approving a resolution for a transfer of a Conditional Use Permit from JOTR, LLC, d/b/a Yo My Goodness to ZOE V, LLC, d/b/a Billie-Jean at the subject location.

A Conditional Use Permit was issued in March, 2014, for the operation of Yo My Goodness, a self-service yogurt shop. Yo My Goodness recently vacated the premises and Zoe Robinson, restaurant owner, is requesting a transfer of the Conditional Use Permit to allow the operation of a new restaurant to be known as Billie-Jean.

The Conditional Use Permit issued for the operation of Yo My Goodness prohibited cooking on the premises and limited the hours of operation to between 11 a.m. and 9 p.m. Billie-Jean will be a full-service restaurant and proposes to operate from 5 p.m. to 1 a.m., Tuesday through Saturday.

Properties to the north and south are residential. Properties to the east and west are commercial. Notices of this hearing were mailed to property owners within 200 feet of the subject property.

Recommendation is to approve the requested transfer pursuant to the conditions contained in the Resolution.

In response to Mayor Sanger's question, Zoe Robinson, owner, addressed the Board stating that her other restaurants close at 12:00 midnight. She stated that the new restaurant would have hours of 5:00 p.m. to 1:00 a.m. noting that her customers probably would not stay until 1:00 a.m. Susan Istenes confirmed that Bar Les Freres' hours are 4:00 p.m. to 12:00 a.m.

Ms. Robinson further explained that the new restaurant is small, featuring contemporary American food, specifically a sophisticated, casual bar business.

Nada Frender, 7616 Walinca Terrace, addressed the Board stating that there is no buffer from the noise and is concerned about the noise that will come from the patio seating especially with the 1:00 a.m. closing hour. She requests that the Board place a time limitation on the patio seating due to the possibility of a noise nuisance.

In response to Alderman Garnholz's request, City Manager Owens explained that there is an application process for outdoor dining and if the applicant met the criteria then it would be approved administratively adding that it is typically the same hours as the restaurant unless defined otherwise.

In response to Alderman Lintz's question, City Manager Owens clarified that a liquor license application will be brought before the Board at a separate meeting.

Tom Wack, 7611 Wydown Boulevard, addressed the Board stating that his property is approximately 100 feet from the location and expressed that although he has no problem with the conditional use permit application and the restaurant(s) he does have a problem with the patio seating and the noise that it could generate. He suggests a 9:00 p.m. closing of the patio.

Betsy Wack, 7611 Wydown Boulevard, addressed the Board adding that they can hear the noise from Bar Les Freres and suspects that they will also be able to hear the noise from the new restaurant patio seating.

In response to Alderman Lintz's question regarding the noise from the former yogurt shop, Mr. Wack stated that the yogurt shop did not have any significant outdoor seating.

Alderman Boulton pointed out that the City parks close outdoor activity at 10:00 p.m. and also felt that 10:00 p.m. is a reasonable time for a restaurant located in a residential area to bring their trade inside.

Mayor Sanger inquired as to the possibility of limiting the time enforcement for the three different restaurants in this residential area.

Ms. Robinson stated that she understands the concerns and does not want to cause any trouble for the neighborhood. She noted that the Architectural Review Board approved no more than six tables on the patio and clarified that she will have only four tables and also that her crowds are usually not young.

In response to Alderman Winings question, Ms. Robinson confirmed that Bar Les Freres operates indoors and outdoors until 12:00 a.m. adding that they have a lot of tables outdoors and that she has not received any complaints, not even the resident that lives above the restaurant.

Alderman Boulton pointed out that Bar Les Freres is located in the heart of that area's commercial setting and that anyone renting a space above a restaurant expects the noise that is associated.

Alderman Berger commented that he does not see the patio seating as a significant issue based on the number of tables. He added that the Board just approved a band for several hours which is close to residential. He has strong faith of Ms. Robinson's relationship with the neighbors.

Alderman Boulton stated that she feels that they are confusing two different issues; a band (four times in four months, 4p – 7p)) versus a noisy patio every night (5p – 1a). She feels that there should be stricter time constraints for residential areas.

Alderman Berger stated that he hopes the aldermen do not want to start restricting dining that's close to other residential neighborhoods in the same way that she is enumerating this particular location. That would be a detriment to our community because we are known for outdoor dining.

In response to Alderman Garnholz's question, City Attorney O'Keefe stated that per the Code outdoor dining permits are subject to reapplication renewal annually.

Alderman Lintz clarified that the Board is not voting on outdoor dining tonight, there is a residential building and also lots of commercial building activity.

Alderman Boulton stated that she would like to address the 1:00 a.m. closing for the new restaurant compared to the 12:00 a.m. closing for the other restaurants.

Mayor Sanger recommended that the closing time is 12:00 a.m.

City Attorney O'Keefe stated that a permit for outdoor dining does not include the right to maintain a nuisance. If someone is operating their enterprise in such a way as to create a public nuisance then they are subject to that problem being addressed.

Alderman Berkowitz commented that he agrees with Alderman Boulton where there is a situation that this is a commercial area within a residential area and suggested other closing times as compared to Ms. Robinson's other restaurants.

Alderman Boulton moved to amend Resolution No. 16-08, to require that the restaurant close at 12:00 a.m. Alderman Berger seconded.

The motion passed 6-Ayes to 1 Nay (Garnholz) on a voice vote.

Alderman Berkowitz moved to further amend Resolution No. 16-08, to require that the outdoor patio dining closes at 10:00 p.m. Alderman Garnholz seconded.

The motion failed 2 – Ayes to 5 – Nays (Winings, Boulton, Berger, Lintz, and Sanger) on a voice vote.

Alderman Garnholz moved to approve Resolution No. 16-08, to consider a transfer of the conditional use permit to Zoe V., LLC d/b/a Billie Jean located at 7610 Wydown Boulevard as amended. Alderman Winings seconded.

The motion passed 5-Ayes to 2- Nays; Roll-call vote – Alderman Garnholz – Aye; Alderman Winings – Aye; Alderman Boulton – Nay; Alderman Berger – Aye; Alderman Lintz – Aye; Alderman Berkowitz – Nay; and Mayor Sanger – Aye.

TO APPROVE AN AMENDMENT TO THE CITY LIQUOR CODE RELATED TO LICENSES AND LICENSEES

City Manager Owens Recent events in local communities regarding liquor licensing have generated questions for staff regarding the City's ability to regulate liquor licensing. The area of concern is regarding potential lewd behavior at these establishments.

The City Attorney has reviewed state law and we present to you the attached ordinance which imports to the city code, and somewhat expands upon, limitations on lewd behavior as provided by current provision in the Code of State Regulations applicable to all state liquor licensees. In addition, the proposed ordinance also imports to the city code other state regulations concerning the duty of liquor licenses to keep an orderly place and cooperate with law enforcement. Though licensees already have an obligation to fulfill these standards by reason of their state license, having parallel performance standards in our own city code will facilitate separate municipal license enforcement efforts should that become necessary. We also took this opportunity for other minor code clean-up to clarify ambiguous or inconsistent language in the licensing and enforcement portions of the code.

Recommendation is to approve the attached ordinance amending the City Liquor Code to prohibit lewd behavior.

Alderman Boulton moved to amend Bill No. 6548, Section A.2 to also include the prohibition of displaying any portion of the areola of the *male* breast.

Alderman Garnholz inquired as to if the City is fortunate to have a live performance venue at which liquor is served would this ordinance apply in an undesirable way. What if the exposure of the breast is art form as part of a live performance?

City Attorney O'Keefe confirmed, yes as does the Code of State regulations governing the conduct of retail licensees. The language *"opaque clothing...front of the breast"* language was added to this ordinance, but the rest of the language is per the State regulations. This ordinance is more restrictive, but the Code is already in place that this conduct is prohibited and subjected to State licensee. He does not recommend restricting artistic performances.

In response to Alderman Boulton's question, City Attorney O'Keefe stated that *"The displaying of any portion of the areola of the female breast or failure to cover the entire areola and front of the breast with opaque clothing;"* is the added language.

Alderman Boulton withdrew her motion to amend the ordinance.

In response to Alderman Garnholz's question, City Attorney O'Keefe explained that he drafted the ordinance (1) as a response to circumstances nearby; (2) when he found this in the Code of State Regulations he felt that the easiest way to avoid risks and/or trying to reinvent the wheel and get into dicey first amendment issues was to track the existing regulations already out there as closely as possible; (3) he hadn't thought of any circumstances where this conduct was problematic that didn't involve places that sold liquor.

Alderman Garnholz introduced Bill No. 6548, an ordinance to approve an amendment to the City Liquor Code related to licenses and licensees to be read for the first time by title only. Alderman Winings seconded.

City Attorney O'Keefe reads Bill No. 6548, an Ordinance Amending Chapter 600 of the Clayton City Code Relating to Liquor Licenses and Licensees for the first time by title only.

The motion passed unanimously on a voice vote.

Alderman Garnholz moved that the Board give unanimous consent to consideration for adoption of Bill No. 6548 on the day of its introduction. Alderman Winings seconded.

The motion passed unanimously on a voice vote.

Alderman Garnholz introduced Bill No. 6548, an ordinance to approve an amendment to the City Liquor Code related to licenses and licensees to be read for the second time by title only. Alderman Winings seconded.

City Attorney O'Keefe reads Bill No. 6548, an Ordinance Amending Chapter 600 of the Clayton City Code Relating to Liquor Licenses and Licensees for the second time by title only.

Alderman Garnholz – Aye; Alderman Winings – Aye; Alderman Boulton – Aye; Alderman Berger – Aye; Alderman Lintz – Aye; Alderman Berkowitz – Aye; and Mayor Sanger – Aye. The bill was adopted and became Ordinance No. 6420 of the City of Clayton.

AN ORDINANCE TO CONSIDER A REVISION TO CHAPTER 215, OFFENSES

City Manager Owens reported as best practice and to keep the City up-to-date, staff periodically reviews the City's Code of Ordinances. Upon review of Chapter 215, the proposed ordinance would update the Code to

enumerate the circumstances in which a person commits the offense of unlawful use of a weapon and the requirements of lawful concealed carry in accordance with legislation enacted in the State of Missouri, effective August 28, 2015. A red-lined version detailing the changes is attached.

Recommendation is to approve the amendment.

In response to Alderman Boulton's question, Alderman Winings pointed out that the definition of a spring gun was included in the ordinance and reads as follows, *Spring Gun - Any fused, timed or non-manually controlled trap or device designed or adapted to set off an explosion for the purpose of inflicting serious physical injury or death.*

In response to Alderman Boulton's question, City Attorney O'Keefe explained that State law requires that municipal ordinances dealing with weapons and ammunition comply exactly with State law and anything that is not consistent with State law is pre-empted. Over the last few years, since we last looked at our ordinance the Missouri General Assembly has been vigorous and vigilant in its protection of the rights of people with respect to weapons and our ordinances have not kept pace.

In response to Alderman Boulton's question regarding a concealed knife, Chief Murphy confirmed that you cannot carry a blade if it's over four inches.

Alderman Garnholz introduced Bill No. 6549, an ordinance to approve an amendment to Chapter 215-Offenses, Weapons, Carrying Concealed and Other Unlawful Uses to be read for the first time by title only. Alderman Winings seconded.

City Attorney O'Keefe reads Bill No. 6549, an Ordinance Amending Chapter 215 of the Code of Ordinances of the City of Clayton, Missouri, Relating to Offenses Concerning Weapons and Firearms for the first time by title only.

The motion passed unanimously on a voice vote.

Alderman Garnholz moved that the Board give unanimous consent to consideration for adoption of Bill No. 6549 on the day of its introduction. Alderman Winings seconded.

The motion passed unanimously on a voice vote.

Alderman Garnholz introduced Bill No. 6549, an ordinance to approve an amendment to Chapter 215-Offenses, Weapons, Carrying Concealed and Other Unlawful Uses to be read for the first time by title only. Alderman Winings seconded.

City Attorney O'Keefe reads Bill No. 6549, an Ordinance Amending Chapter 215 of the Code of Ordinances of the City of Clayton, Missouri, Relating to Offenses Concerning Weapons and Firearms for the first time by title only.

Alderman Garnholz – Aye; Alderman Winings – Aye; Alderman Boulton – Aye; Alderman Berger – Aye; Alderman Lintz – Aye; Alderman Berkowitz – Aye; and Mayor Sanger – Aye. The bill was adopted and became Ordinance No. 6421 of the City of Clayton.

A RESOLUTION TO CONSIDER APPROVING SUBMITTAL OF A HAZARDOUS MOVING VIOLATION ENFORCEMENT GRANT APPLICATION

City Manager Owens summarized that the next two resolutions are for submitting grant applications to MoDOT.

Alderman Garnholz moved to approve Resolution No. 16-09, approving staff submittal of a Hazardous Moving Violation Enforcement grant application. Alderman Winings seconded.

The motion passed unanimously on a voice vote.

A RESOLUTION TO CONSIDER APPROVING SUBMITTAL OF A DRIVING WHILE INTOXICATED ENFORCEMENT GRANT APPLICATION

Alderman Garnholz moves to approve Resolution No. 16-10, approving staff submittal of a Driving While Intoxicated Enforcement grant application. Alderman Winings seconded.

The motion passed unanimously on a voice vote.

Other

Alderman Garnholz reported on the following:

- Congratulations to Mayor Sanger on his re-election.
- Job well done to City staff on a great *Cardinals Home Opener* event.
- A “lil library” is now available at DeMun Park.
- The Moorlands’ Neighborhood meeting is scheduled for April 13th at The Center.
- The Wydown Forest Neighborhood meeting will be held next week.
- The Vehicle Use Tax and MSD’s Propositions Y and S passed in the recent election.
- The Municipal League is meeting tomorrow at Boeing Corporation and a tour of the facilities will be provided.

Alderman Berkowitz reported on the following:

- Thanks to City Manager and Gary Carter for the one-on-one sessions regarding economic development.

Mayor Sanger also thanked staff for a great event – *Cardinals Home Opener*.

Alderman Berkowitz moved that the Board adjourn to a closed meeting, with a closed vote and record, as authorized by Section 610.021(1), (2) and (3) Revised Statutes of Missouri, relating to legal issues, real estate and/or personnel, and to discuss matters related to negotiation of a contract pursuant to Section 610.021(12), RSMo. and/or proprietary information pursuant to Sec. 610.021(15), and/or information related to public safety and security measures pursuant to Section 610.021(18) and (19) RSMO. Alderman Lintz seconded the motion.

Alderman Garnholz – Aye; Alderman Winings – Aye; Alderman Boulton – Aye; Alderman Berger – Aye; Alderman Lintz – Aye; Alderman Berkowitz – Aye; and Mayor Sanger – Aye.

There being no further regular business the meeting was adjourned at 8:12 p.m.

Mayor

ATTEST:

City Clerk